

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1227 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR RC KODEKAR, AGP for Petitioner

MR AS VAKIL for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 19/10/2000

This Revision Application which is filed under Section 115 of the Code of Civil Procedure, 1908 is directed against order dated April 2, 1994 passed by the learned 2nd Joint Civil Judge (Senior Division), Bhavnagar in Court Fee Reference No.53/93 which was submitted in Special Civil Suit No.23/90 whereby prayer made by the Inspecting Officer, Court Fees, Bhavnagar to direct the respondent to pay deficit Court Fee stamps of Rs.700 is rejected.

2. The respondent bank has filed Special Civil Suit No.23/90 in the Court of learned Civil Judge (Senior Division) at Bhavnagar against creditors for recovering the amount of loan advanced to the defendants together with interest. The respondent has paid Court Fee stamps of Rs.3220/- on the plaint. The Inspecting Officer, Court Fees, Bhavnagar had examined the plaint with a view to finding out whether proper fees have been paid therein. On examination of the plaint, the Inspecting Officer, Court Fees found that the respondent had advanced three types of loans to defendants and opened three accounts after execution of different contracts and the rate of interest payable on the loans was also different in the three transactions. He was therefore of the opinion that the reliefs claimed in the plaint were embracing separately different subject matters and each of the subject was chargeable with court fee stamps under Section 18 of the Bombay Court Fees Act, 1959 (the 'Act' for short) read with Section 6(i) of the said Act. According to the officer, the plaint Exh.1 required court fee stamps of Rs.3920/-. The Inspecting Officer therefore submitted a report under Section 12(3) of the Act to the learned Judge and prayed to direct the respondents to pay deficit court fee stamps of Rs.700/-.

3. On notice being issued, the respondent filed reply at Exh.16 and inter alia contended that as the respondent was entitled to combine all the reliefs claimed for in the plaint against the defendants for their aggregate liability, the court fee stamps paid were proper and the reference should be rejected.

4. The learned 2nd Joint Civil Judge (Senior Division), Bhavnagar has rejected the court fee reference by order dated April 2, 1994 giving rise to the present Revision Application. The Revision Application was placed for admission hearing before the court (Coram: H.L. Gokhale, J.) on June 21, 1996 and the Learned

Single Judge had passed the following order:

"Heard Miss Parmar, AGP for the petitioners and Mr. A.S. Vakil for the respondent No.1. Identical issue arising in another matter being C.R.A. No.597/95 has been referred by my Brother Karia, J. for the determination of a Division Bench in view of the conflicting decisions of two ld. Single Judges, by order dt.19.4.96. This is a similar matter. Hence Rule on this C.R.A. To be placed alongwith C.R.A. No.597/95 before a Division Bench."

5. In view of the above quoted direction, this Revision Application is notified for hearing before Division Bench with Civil Revision Application No.597/95. We have heard the learned counsel for the parties. In State of Gujarat vs. The State Bank of Saurashtra and another [1994 (2) GLR 1738], a learned Single Judge of this court had taken the view that where on different dates, different types of loans repayable with different rate of interest are granted, the court fees cannot be levied, as provided under Section 18 of the Act but the court has to levy the court fees after evaluating different subject matters separately. In Indian Bank vs. M/s. Advance Art Silk Private Ltd. and Others [1995 (2) GLR 1089], another learned Single Judge of this court had taken the view that where a bank advances money to an individual under different banking facilities, the Court Fee is payable on the total amount payable under all the facilities and not on individual items. In view of this conflict of decisions, Civil Revision Application No.597/95 is referred to the Division Bench for disposal with which present Revision Application is ordered to be heard. The learned counsel for the respondent has brought to the notice of this court decision of Division Bench rendered in the State of Gujarat vs. Bank of Baroda and Others [1997 (1) GLH 43] and submitted that in view of the decision of the Division Bench, the Revision Application should be dismissed. A perusal of the reported decision of the Division Bench makes it manifest that the view taken by the learned Single Judge in State of Gujarat vs. The State Bank of Saurashtra and another [1994 (2) GLR 1738] is specifically overruled. The Division Bench after construing the provisions of Section 18 of the Bombay Court Fees Act, 1959, Section 8 of the Suit Valuation Act, 1887 and Order 2 Rule 3 read with Order 7 Rule 1 of Code of Civil Procedure, 1908 has held that where a bank advances money to an individual under different banking facilities, court fees is payable on the total amount payable under all the facilities and not

on individual items. After placing reliance on the Full Bench decision of the Bombay High Court in Hiralal Motichand vs. Ganpat Lahani and Others [AIR 1922 Bombay 376], the Division Bench has ruled that the opening of three accounts and entering into three different contracts do not constitute different causes of action or different subject matter and court fee is payable on the total amount payable under all the facilities and not on individual items. The learned counsel for the petitioner has not pointed out any binding decision which has taken the view contrary to one expressed by the Division Bench of this court in the State of Gujarat vs. Bank of Baroda and Others (*supra*). Having regard to the principles laid down by the Division Bench of this court in the State of Gujarat vs. Bank of Baroda and Others (*supra*), we are of the opinion that the Revision Application has no substance and deserves rejection.

6. For the foregoing reasons, the Revision Application fails and is dismissed. Rule is discharged with no orders as to cost.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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